

5-24-1973

"What the National News Council Has In Mind, An Interview With Roger Traynor" and Letter From Jack Howard Addressed to Roger J. Traynor and Joan Ganz Cooney

Donald McDonald

Jack Howard

Follow this and additional works at: <http://repository.uchastings.edu/nnc>

Recommended Citation

Donald McDonald and Jack Howard, *"What the National News Council Has In Mind, An Interview With Roger Traynor" and Letter From Jack Howard Addressed to Roger J. Traynor and Joan Ganz Cooney* (1973).

Available at: <http://repository.uchastings.edu/nnc/55>

This News Article is brought to you for free and open access by the Judicial Ethics and the National News Council at UC Hastings Scholarship Repository. It has been accepted for inclusion in Formation of the National News Council by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.

16

THE WILLIAM BENTON FOUNDATION
342 MADISON AVENUE
SUITE 702
NEW YORK, N. Y. 10017

May 24, 1973

Justice Roger Traynor
Hastings College of the Law
University of California
198 McAllister Street
San Francisco, Calif. 94102

Dear Roger:

Following up on our conversation, I'm enclosing a copy of the letter I've sent to the other members of the Council enclosing a copy of The Center Magazine.

Sincerely yours,



Jack Howard
Assistant Secretary

cc Mr. Murray Rossant
Mr. Leon Sigal

hk

16
May 24, 1973

Ms. Joan Ganz Cooney
President
Children's Television Workshop
1 Lincoln Plaza
New York, N. Y. 10023

Dear Ms. Cooney:

You may recall that at the organizational meeting of the National News Council Justice Traynor remarked on the Broadcasting and the First Amendment conference held recently in Santa Barbara. An excellent summary of the conference is found in The Center Magazine, as well as an interview with Justice Traynor of the Council.

With Justice Traynor's encouragement I'm providing a copy of The Center Magazine to members of the National News Council. But I have to confess that my motives are mixed: the William Benton Foundation financed the conference, which was held at the Center for the Study of Democratic Institutions.

Sincerely yours,

Jack Howard
Assistant Secretary

hk

cc Justice Roger Traynor ✓

WHAT THE NATIONAL NEWS COUNCIL HAS IN MIND

Q: *Chief Justice Traynor, how long have you been retired, and what have you been doing since your retirement?*

TRAYNOR: I retired as Chief Justice on January 31, 1970, and was in Charlottesville, Virginia on February 1, 1970, to teach for a semester at the University of Virginia Law School. After that, I taught during a summer session at the University of Colorado Law School. From there I went to the Hastings College of Law of the University of California in San Francisco. Last year, I taught at the University of Utah College of Law. This year, I am again teaching at Hastings.

Q: *What are you teaching?*

TRAYNOR: A seminar in the judicial process and also a course in criminal procedure.

Q: *How were you approached for this job as chairman of the National News Council?*

TRAYNOR: Paul Reardon, Associate Justice of the Supreme Judicial Court of Massachusetts and a member of the

task force that proposed the formation of the council, wrote to me some time ago asking if I would be interested in the job. At the time I was preoccupied with so many other things, including the Code of Judicial Conduct recently adopted by the American Bar Association, that I told him I did not think I

could undertake it. Then he and Justice Louis Burke of the California Supreme Court got in touch with me. In the meantime, I had begun reading about press councils and came to the conclusion that there was a deep public interest to be served by such councils in maintaining press freedom. In other words, the public, and not the media alone, has a stake in press freedom, just as the public, and not only lawyers and judges, has a deep concern for justice. So, on this second invitation, I accepted.

Q: *What were your relations with the press when you were a California Supreme Court justice?*

TRAYNOR: I had very good relations with the press. I would always see reporters if it was at all feasible to do so and if the pressure of work would permit it. We set up a system in the Court in the interest of getting accurate reporting of important cases. We assigned a secretary to the sole task of writing statements of what the various cases really held, what the facts were, what the issues of the law were, what the Court decided, and what the dis-

A Free and Responsive Press

The Twentieth Century Fund Task Force Report
for a NATIONAL NEWS COUNCIL
Background Paper by Alfred Balk

The Twentieth Century Fund: New York, 1973

senting opinions, if any, held. We also issued a strong injunction to this secretary, or information officer, against using that office as a public-relations gimmick to build up support for the courts. Our only concern was accuracy of reporting.

Q: Did the journalists assigned to the Court use that service?

TRAYNOR: Oh, yes. It was of great help to them. They were very grateful, and it took a big load from my shoulders because our information officer could answer reporters' questions instead of my undertaking to explain what the Court had held. I am convinced that the reporters really wanted to be accurate and that it was in the public's interest as well as the Court's that they be accurate. I often asked them why they did not study law the better to understand court decisions as Anthony Lewis did when he was covering the United States Supreme Court for *The New York Times*, or as did Fred Graham when he covered the Court for the *Times*.

Q: Why do you think a national news council is needed now?

TRAYNOR: There is need for a buffer between the government and the press. I think that a council like this one, with no ax to grind, fills that need. A task force explored this problem for almost two years for the Twentieth Century Fund and came to the conclusion that a national news council was needed.

Q: Who made up that task force?

TRAYNOR: It included Mrs. Lucy Wilson Benson, president of the League of Women Voters; C. Donald Peterson, associate justice of the Minnesota Supreme Court and chairman of the Minnesota Press Council; Richard Salant, president of Columbia Broadcasting System News; John Oakes, editorial page editor of *The New York Times*; Barry Bingham, Sr., chairman of the board of the *Louisville Courier-Journal*; Richard Harwood, assistant managing editor of the *Washington Post*; Hodding Carter, editor of the *Delta Democrat-Times* of Greenville, Mississippi; Stimson Bullitt, president

of King Broadcasting Company; Robert Chandler, editor of the *Bend Bulletin*, Bend, Oregon; and Hartford N. Gunn, president of the Public Broadcasting System.

Q: Last November, a Harris Poll asked people about their confidence in leaders of American institutions, and it revealed that out of sixteen institutions, only labor unions and advertising ranked lower than the print and electronic media in public confidence.

TRAYNOR: If that poll is accurate, it would indicate a need for some kind of explanation. If the low esteem of the public for the media is owing to the media's general inaccuracy and unfairness — which I doubt — that should be known. If it is not owing to inaccuracy or unfairness, then that should be known, too. I think it would be an important function of the National News Council to try to ascertain why the public rates the media so low. If the media are in low public esteem, they are that much more vulnerable if the government attacks them. An informed and intelligent public understanding of the vital role of the media in a free society, an understanding enlightened by an independent, responsible, and objective evaluation of their performance, would be a powerful defense to such attacks. A news council can serve to improve that understanding. For that reason, I think those in the media who oppose the idea of a news council may be very shortsighted.

Q: Quite a few editors oppose the council, don't they?

TRAYNOR: I think a recent poll of members of the American Society of Newspaper Editors showed them opposed, four to one. But that means that there is still a significant number in favor of a council.

Q: Why are so many opposed to the council idea?

TRAYNOR: I don't know. My impression, from viewing news programs on television and reading papers like the *Los Angeles Times* (which I regard as one of the best newspapers in the country), is that, by and large, their reporting has been accurate and fair. But if

I am wrong, that fact should be exposed. There should also be a way in which aggrieved people can get a hearing.

Q: One of the things that Arthur Sulzberger, the publisher of The New York Times, has said is that your council will, in effect, ask the media to accept a voluntary regulation in the name of "enhancing press freedom."

TRAYNOR: The council cannot regulate. It has no sanctions at all. The only power it will have will be the publicity given its proceedings.

Q: Of course, if the media do not publicize the findings of the council it will not have very much power.

TRAYNOR: That's right. But even though many editors may be opposed



to the idea of a news council, I am convinced that even they will report our findings. Although Mr. Sulzberger said that he would not participate in the work of the council, I do not believe that the *Times* would refuse to publish the council's findings, even when they were against the *Times*, or other findings when it found them newsworthy.

Q: If I may, I would like to stay for a moment with Mr. Sulzberger's objections to the council. He said that he recognizes the council is nongovernmental and that it would not have any enforcement powers. But he added: "We fear that it would encourage an atmosphere of regulation in which government intervention might gain public acceptance." Do you think that his fear has any justification? And, if you

do, can the council do anything to discourage rather than encourage government intervention? Or is that a risk that has to be taken if the council is to function at all?

TRAYNOR: As I said earlier, I think that the council can be a buffer between government and the press. If it is true that the media are held in low esteem by the public, a council might be able to expose the reasons for that low esteem.

If the media have been inaccurate or unfair, why should they be immune from criticism? If a person has been aggrieved, why should his grievance not be exposed and redressed at least to the extent that the findings of an impartial and reputable body such as a press council, dedicated to fairness and objectivity, are given publicity? Why should the media not be vindicated when they are unfairly attacked?

"I cannot believe that a council, completely detached from government and without any power to impose any sanctions whatever other than publicity, can be in any way a threat to press freedom or encourage an atmosphere of regulation."

I cannot believe that a council, completely detached from government and without any power to impose any sanctions whatever other than publicity, can be in any way a threat to press freedom or encourage an atmosphere of regulation. What have the media to fear from publicity, their very stock in trade? Are they so infallible as to be above criticism? Must the defense of freedom of the press be left solely to them?

I see no risk whatever that a press council would encourage government intervention. Indeed, it would do the opposite by serving to remove any basis for any claim that there is a need for such intervention. The risk is rather that government officials might otherwise be encouraged to attack assumptions of media infallibility on which

opposition to news councils seems to be based and to exploit the public disaffection with the media indicated by the Harris Poll.

Q: There is scattered evidence around the country that some editors are aware of a certain amount of public disaffection with the press, and they are trying to do something about it by setting up ombudsmen to handle reader complaints. And the press in Minnesota have set up a state press council. I suppose it is possible that self-regulation by the media might make your council's work unnecessary.

TRAYNOR: Yes, it's possible that they could put us out of business, at least in the matter of complaints, and I would be delighted. And I'm really surprised that the media themselves have not already set up a council like ours.

Q: When will your council begin its work?

TRAYNOR: We had hoped to start in March but I do not think we will make that deadline. We have not completed the selection of our fifteen-person council. It will have nine public members and six members from the media who have no connection with any of the national news media because the council will be limited to hearing complaints by or against the national news media. Any council media member may be an owner or employee of any news medium that is not national. We include under "national" the major wire services; the largest supplemental news services such as *The New York Times* and the *Washington Post*—*Los Angeles Times* services; weekly news magazines with national circulations; national newspaper syndicates; and the broadcasting networks.

Q: Who is selecting the council members, and what qualifications do they have to have?

TRAYNOR: The members of the council are being selected by a founding committee of the task force. They will be people who have demonstrated outstanding ability in their respective occupations and who will command the

universal respect of the public as well as the media by virtue of their integrity, objectivity, and sound judgment.

Q: Are you guaranteed an initial period of time for the council's operation?

TRAYNOR: We will have a three-year period at the start. And then, built into the charter of the council is a provision calling for an evaluation of the council's work at the end of that time by an impartial group of outsiders.

Q: You will have a supporting staff?

TRAYNOR: Yes, and we will depend heavily on our executive director whom we have not yet selected. Our headquarters will be in New York, but much of our work will probably be done in various places where hearings may be held.

Q: Will the council initiate any inquiries?

TRAYNOR: We will initiate studies on the freedom of the press. For example, there could be a study relating to the First Amendment and how it extends to broadcasting, or a study concerned with the government's efforts to subpoena reporters' notes, or grand juries' efforts to get reporters to disclose the sources of their information. But we will not initiate complaints against the media.

Q: How will you handle complaints?

TRAYNOR: Somebody brings a complaint to the council. His complaint must be in writing and he must stipulate that he waives all legal and administrative remedies so that he cannot use the council for a dry run of a contemplated legal or administrative proceeding or as a discovery device to build up a case against a news medium in court or before an administrative board. If a complainant is going to court on his complaint or is going to seek an administrative remedy for it, the council will not hear his complaint.

The complainant must show that he has attempted to resolve his differences with the news medium involved. He must give a copy of his complaint to the news medium he is complaining against. We think that these require-

ments will lead to the settlement of many cases so that the council may not have to act at all on them. But if the complainant does not get a response or if he gets an inadequate response, we will examine the complaint. The council's staff will screen out those complaints that are merely emotional, quibbling, or carping and will endeavor to reach settlements in cases that hold promise of settlement. The remaining complaints involving serious issues will be referred by the staff to the council's grievance committee. The committee will select those that seem to be most worthy of attention if the committee is so swamped that it cannot handle all the complaints. Thus, we may have to adopt a procedure somewhat akin to that of the United States Supreme Court, which selects the cases it has the time and energy to consider.

Q: Will the council's proceedings be open to the public?

TRAYNOR: Yes, that is required by the bylaws of the council. We will receive absolutely nothing in confidence. And all hearings will be open to the public, to the press, to the radio and television broadcasters.

Q: How often will you make the results of your findings public?

TRAYNOR: We will make an annual report but we will also report immediately when we come to a conclusion concerning a complaint we have received and acted on, or an investigation or study we have initiated.

Q: Suppose that you do act on a complaint against a newspaper or a broadcaster or a magazine, and the owners refuse to cooperate with the council. They will not tell you how and why they handled a story or an event the way they did.

TRAYNOR: Those difficulties would be candidly set forth in any report we made. They would become part of the record. Under our bylaws we can receive only such information as is voluntarily disclosed and have no power to compel the production of evidence by any party or witness. However, the refusal of a medium to participate in

the proceeding on a complaint against it would not foreclose our acting on the complaint. We would reach our decision on the basis of whatever evidence was otherwise available. The decision and the reasons for it would be made public for all to see.

Q: Would you expect reporters, editors, and broadcasters to reveal confidential sources?

TRAYNOR: No. The council's charter makes it clear that the council will observe the principle of confidentiality of news sources and of materials acquired in gathering news and will apply that principle in its proceedings.

Q: A difficulty in judging the performance of the news media is that often the one judging must, in a real sense, have firsthand knowledge of a particular event or situation in order to determine whether the media have reported it accurately and comprehensively. But this kind of detailed personal knowledge is almost impossible to get in many cases. As a result, the news media historically have been pretty invulnerable to the criticism which goes to the comprehensiveness of their reporting.

TRAYNOR: You raise a very sensitive question when you talk about the adequacy of the media's reporting. There must be a wide area for editorial judgment as to what is newsworthy and the extent and depth of news coverage. The media cannot publish everything and must necessarily be selective in what they publish.

Q: Wouldn't your council have to know all the facts that an editor had in front of him, as well as the facts that his reporters could have gathered but perhaps did not gather, in order to make a judgment about the performance of a news medium in any given instance?

TRAYNOR: By "performance" I understand you to mean the accuracy and fairness of the news medium. The parties to a hearing on a complaint will be relied upon for the most part to present the facts that are relevant, including facts that the reporters could have gathered but did not gather. Fur-

ther probing for additional facts from witnesses not presented by the parties will call for wise judgment and objectivity on the part of the council, subject always to the conditions that its proceedings are open to the public, that the council can receive only such information as is voluntarily disclosed and cannot compel the production of evidence from anyone.

Q: Are you familiar with the experience of the British press council?

TRAYNOR: Yes, somewhat. I understand that it met considerable opposition from the news media at the start, but that gradually, under the leadership of Lord Devlin and as both the public and the press came to understand its work, it earned the respect of the press and the public.

Q: Do you feel, then, that your council, too, will have to earn the respect of the media and the public by the way it goes about its work?

TRAYNOR: Yes. And I would say that in addition to our determination to be absolutely fair and objective, the council has built into it certain procedures that I think will command the respect of the news media and the public. I have already mentioned several: the complete openness of our proceedings; the stipulation that the council's proceedings cannot be used to prepare for court action or the pursuit of administrative remedies; the condition that complainants must first seek to reconcile their grievances with the media before approaching the council.

We also will have a procedure by which the media can bring complaints against any individual, public or private, that is interfering with press freedom.

I should like to emphasize that we will approach these complaints with complete impartiality and objectivity. If our hearings turn out to favor the medium complained against, fine, we will make that public. If they don't, we will make that public. At the end of the year, if a statistical study of our findings indicates a pattern of misbehavior, we will make that public. If it shows a pattern of good performance, we will publicize that. But in no sense will there ever be any justifica-

tion for anyone to think that the council will be a cosmetic or stooge for the news media. It will be as absolutely objective as possible, as objective as a court of law must be.

Understand, these hearings will not be like formal judicial proceedings. Rules of evidence, for example, will not be controlling. We do not want to turn the council's work into a judicial process, but we do want the fairness and objectivity that are associated with judicial proceedings at their best.

Q: Will the entire council decide which complaints to handle and also hold the hearings and write the final opinions?

TRAYNOR: The entire council could decide that a complaint be heard, but as I explained earlier, that responsibility is left largely to the grievance committee. The initial hearing will be by that committee but further hearings can be held by the entire council if it finds them necessary. The final action on the recommendation of the committee will be by the entire council, and it will write the final opinion.

Q: One of the criticisms leveled against the mass media — James Reston of The New York Times has been one of those who have made this criticism most trenchantly — is that they are so concerned with reporting overt events, things that have "happened," that they neglect to report the ideas and underlying social and cultural changes which help to cause these events, reporting which could make the events intelligible. Will the National News Council

be concerned with this kind of criticism?

TRAYNOR: That might be a possible subject for investigation and study, but not for a complaint. That kind of criticism involves editorial judgment. I do not think the council would want to substitute its judgment for that of the media owners and operators as to what their function is. Like the question of adequacy in reporting that you raised earlier, this is a sensitive one, the answer to which must be left largely to the judgment of editors and broadcasters. I should prefer to proceed very carefully on that kind of problem and to have it handled as a study undertaken by schools of journalism and possibly by the council rather than through a complaint procedure.

Q: Here is another kind of complaint, again coming from an editor. After last year's Presidential election, Ben Bradlee, the executive editor of the Washington Post, told a group of his fellow journalists that other newspapers, including those subscribing to the Post's news service, were "not very interested in the [Watergate] story, and I'll be damned if I can see why." Would your council be receptive to that kind of complaint?

TRAYNOR: I doubt that it would. Again, what interests the media, what they deem newsworthy, depends largely on their editorial judgment, even when hindsight shows that the judgment proved not to be too good. A com-

plaint, however, that made a prima-facie case of deliberate suppression of what any reasonable journalist would deem newsworthy, or that demonstrated a pattern of deliberate discrimination in news coverage, would probably require a hearing. At this point, I would approach such questions carefully, preferably by way of studies and reports by our freedom-of-press committee rather than by our complaint procedures.

Q: What provision has the council made for publicizing its findings, aside from making them available to the mass media for publication?

TRAYNOR: Making the council's findings public will be an important part of our over-all function, but the extent to which the council itself will publish its findings may be determined by the funds available.

Q: What funds are available?

TRAYNOR: I do not really know except that no funds have been or can be sought or accepted from the media or from any government or governmental agency. Nor do I know the extent to which foundations or individuals have been or are being solicited for funds. I have had nothing to do with the funding of the council; and, of course, I have not been asked to solicit a dime for the council's operations.

The interview with Judge Traynor was conducted by Executive Editor Donald McDonald.